IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 463 OF 2006
WITH
CIVIL APPLICATION NO. 565 OF 2006

Vishwanath Gurappa Malage & ors. ... Applicants

V/s

Gote & Sons & ors. ... Respondents

Mr. Uday P. Warunjikar for the appellants.
Mr. G.S. Godbole for the respondents.

CORAM: A.M. KHANWILKAR, J.
DATED: 28TH JULY, 2006

P.C.:

1. Heard counsel for the parties.

2. Counsel for the appellants to correct the clerical error which has occurred in the cause title. Amendment to be carried out during the course of the day.

3. Perused the relevant documents. I find no reason to depart from the findings and conclusion reached by the lower Court, particularly noted in para 13 of the impugned order.

4. Counsel for the appellants, however, vehemently

argued that as the appellants have already questioned the correctness of the Trade Mark Certificate issued in favour of the respondents, the lower Court exceeded jurisdiction in granting interim relief to the respondents. Reliance was placed on Sec. 124 of the Trade Marks Act, 1999 to support this position. This argument, however, clearly overlooks the provision contained in sub-section (5) of Section 124 of the Act. So far as Section 124 of the Act is concerned, suit cannot proceed further when the defendants raise plea that the registration of the plaintiffs' Trade Mark is invalid. Inspite of such stay of the suit, sub-section (5) authorises the Trial Court to grant interlocutory order including the order of injunction as has been passed in the present case during the pendency of the suit. Thus understood, there is no substance in the objection taken on behalf of the appellants.

4. It was next contended by the learned counsel for the appellants that Trade Mark registration certificate granted in favour of the respondents is in clear disregard of the mandatory provision of Sec. 14 of the Act, 1999. According to the appellants, the authority has not made investigation into the fact that the person in whose name Trade Mark was to be granted has expired

and he was not in existence for production of relevant documents before granting the registration certificate. This argument does not commend to me. That grievance can be addressed in the pending proceedings before the appropriate authority under the Trade Mark Act. For the present, the question that needs to be addressed is that, whether the Trial Court was justified in granting interim relief. In my opinion, the view taken by the lower Court that in the wake of cerficate granted in favour of the respondents it is not open to the appellants to use the said Trade Mark in any manner is the correct approach. This is the legal mandate. If so understood, the order of injunction cannot be faulted. The suit has been filed on the basis that there is a valid Trade Mark certificate operating in favour of the plaintiffs and the same is being breached by the appellants. In that backdrop, relief of injunction is sought. Having regard to the frame of the suit, no fault can be found with the order of the lower Court.

5. The appeal, therefore, fails and is dismissed. No order as to costs.

6. In view of this order, the civil application also stands dismissed.

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